

The Examiner has restricted the invention under 35 U.S.C. §372 and 37 C.F.R. §1.499 into the following groups:

- I. Claims 1-12, drawn to a nozzle.
- II. Claims 13-22, drawn to snowmaking equipment.

Applicant provisionally elects to prosecute Group I, claims 1-12, with traverse.

The inventions of Group I, i.e., claims 1-12, and of Group II, i.e., claims 13-22, are linked by a single general inventive concept. For example, both claims 1 and 13 are directed towards a spray nozzle having, *inter alia*, for producing a flat spray pattern and means to vary the cross-section of an aperture in the nozzle to so affect the spray. Thus, it is respectfully submitted that claims 1-22 have the same single general inventive concept and must be considered one invention pursuant to PCT Rule 13.1 and 37 C.F.R. §1.499.

Moreover, during the international phase of the subject application, the claims were ruled in compliance with the unity of invention requirements as set forth in PCT Rule 13. See, e.g., the International PCT Search Report and Written Opinion. According to PCT Article 27(1), it is not allowed for any national law to require compliance with requirements relating to the contents of the international application different from or additional to those provided for in the PCT. Thus, the unity of invention requirement laid down in PCT Rule 13 must be accepted by all the designated and elected offices, including the United States Patent and Trademark Office, as set forth below:

PCT Article 27(1) National Requirement

No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

PCT Applicant's Guide (Articles 2(x) & 27(1) & Rule 13

138. An international application which complies with the unity of invention requirements laid down in Rule 13 must be accepted by all the designated and elected Offices, since Article 27(1) does not allow any national law (as defined in Article 2(x)) to require compliance with requirements relating to the contents of the international application different from or additional to those provided for in the PCT. (emphasis added)

Moreover, the PCT Administrative Instructions which further detail the governing procedures for PCT Rules 13.1 and 13.2, also specifically caution examiners that determination of unity of invention must be carefully made with logically presented, technical reasoning. In particular and especially in the case of *a posteriori* determinations, any finding of lack of unity of invention must only be made after meeting a high burden of proof, as follows:

[E]specially in an “*a posteriori*” situation ... stating the finding of lack of unity of invention ... should only be made, however, where the lack of unity is beyond doubt. (PCT International Search Guidelines, PCT Gazette - Section IV, S-06/1998(E), page 27, 8 October 1998) (emphasis added)

Further, the PCT Administrative Guidelines further state the benefit of any doubt relating to unity of invention should be given to the applicant, as follows:

Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor persisted in on the basis of a narrow, literal or academic approach. ... [T]he benefit of any doubt being given to the applicant. (PCT International Preliminary Examination Guidelines, PCT Gazette - Section IV, S-07/1998(E), page 23, 29 October 1998) (emphasis added)

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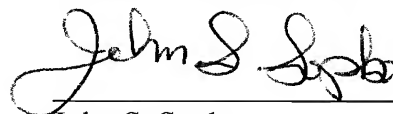
In view of the above-described standards, guidelines, rules and articles for determination of unity of invention and in further view of the arguments presented above, the Action clearly fails to present a *prima facie* showing of lack of unity of invention. Therefore, Applicant respectfully requests withdrawal of the requirement for restriction and that prosecution of the application, including all of claims 1-22, proceeds on the merits.

For the reasons set forth above, Applicant respectfully requests that the requirement for restriction to be withdrawn and consideration of all the claims on the merits be commenced.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number set forth below.

Respectfully submitted,



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